

Senate File 413 - Introduced

SENATE FILE _____
BY COMMITTEE ON LABOR AND
BUSINESS RELATIONS

(SUCCESSOR TO SF 157)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to wage payment collection issues arising between
2 employers and individuals who provide services to employers,
3 providing penalties, and including an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 2067SV 83
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1 1 Section 1. Section 91A.2, subsection 6, Code 2009, is
1 2 amended to read as follows:
1 3 6. "Liquidated damages" means the sum of five percent
1 4 multiplied by the amount of any wages that were not paid or of
1 5 any authorized expenses that were not reimbursed on a regular
1 6 payday or on another day pursuant to section 91A.3 multiplied
1 7 by the total number of days, excluding Sundays, legal
1 8 holidays, and the first seven days after the regular payday on
1 9 which wages were not paid or expenses were not reimbursed.
1 10 However, such sum shall not exceed twice the amount of the
1 11 unpaid wages ~~and shall not accumulate when an employer is~~
~~1 12 subject to a petition filed in bankruptcy.~~
1 13 Sec. 2. Section 91A.5, subsection 1, unnumbered paragraph
1 14 1, Code 2009, is amended to read as follows:
1 15 An employer shall have the burden to establish that a
~~1 16 deduction from employee wages is lawful.~~ An employer shall
1 17 not withhold or divert any portion of an employee's wages
1 18 unless:
1 19 Sec. 3. Section 91A.5, subsection 1, paragraph b, Code
1 20 2009, is amended to read as follows:
1 21 b. The employer ~~has~~ obtains advance written authorization
1 22 from the employee to so deduct for any lawful purpose accruing
1 23 to the benefit of the employee.
1 24 Sec. 4. Section 91A.6, subsection 1, Code 2009, is amended
1 25 to read as follows:
1 26 1. An employer shall ~~after being notified by the~~
~~1 27 commissioner pursuant to subsection 2 do the following:~~
1 28 a. Notify its employees in writing at the time of hiring
1 29 what wages and regular paydays are designated by the employer.
1 30 b. Notify its employees in writing whose wages are
~~1 31 determined based on a task, piece, mile, or load basis about~~
~~1 32 the method used to calculate wages and when the wages are~~
~~1 33 earned by the employees.~~
1 34 c. Notify, at least one pay period prior to the initiation
1 35 of any changes, its employees of any changes in the
2 1 arrangements specified in this subsection † that reduce wages
2 2 or alter the regular paydays. The notice shall either be in
2 3 writing or posted at a place where employee notices are
2 4 routinely posted.
2 5 ~~e-~~ d. Make available to its employees upon written
2 6 request, a written statement enumerating employment agreements
2 7 and policies with regard to vacation pay, sick leave,
2 8 reimbursement for expenses, retirement benefits, severance
2 9 pay, or other comparable matters with respect to wages.
2 10 Notice of such availability shall be given to each employee in
2 11 writing or by a notice posted at a place where employee
2 12 notices are routinely posted.
2 13 ~~d-~~ e. Establish, maintain, and preserve for three
2 14 calendar years the payroll records showing the hours worked,

2 15 wages earned, and deductions made for each employee and any
2 16 employment agreements entered into between an employer and
2 17 employee. Failure to do so shall raise a rebuttable
2 18 presumption that the employer did not pay the required minimum
2 19 wage under section 91D.1.

2 20 Sec. 5. Section 91A.6, subsection 2, Code 2009, is amended
2 21 by striking the subsection.

2 22 Sec. 6. Section 91A.6, subsection 4, Code 2009, is amended
2 23 by striking the subsection and inserting in lieu thereof the
2 24 following:

2 25 4. a. On each regular payday, the employer shall send to
2 26 each employee by mail or shall provide at the employee's
2 27 normal place of employment during normal employment hours a
2 28 statement showing the wages earned by the employee, the
2 29 deductions made for the employee, and the following
2 30 information, as applicable:

2 31 (1) For each employee paid in whole or in part on an
2 32 hourly basis, the statement shall show the hours the employee
2 33 worked.

2 34 (2) For each employee paid based on a percentage of sales
2 35 or based on a percentage of revenue generated for the
3 1 employer, the statement shall include a list of the amount of
3 2 each sale or the amount of revenue during the pay period.

3 3 (3) For each employee whose pay is based on the number of
3 4 tasks, pieces, miles, or loads performed, the statement shall
3 5 include the applicable number performed during the pay period.

3 6 b. An employer who provides each employee access to view
3 7 an electronic statement of the employee's earnings and
3 8 provides the employee free and unrestricted access to a
3 9 printer to print the employee's statement of earnings, if the
3 10 employee chooses, is in compliance with this subsection.

3 11 Sec. 7. Section 91A.8, Code 2009, is amended to read as
3 12 follows:

3 13 91A.8 DAMAGES RECOVERABLE BY AN EMPLOYEE.

3 14 When it has been shown that an employer has ~~intentionally~~
3 15 failed to pay an employee wages or reimburse expenses pursuant
3 16 to section 91A.3, whether as the result of a wage dispute or
3 17 otherwise, the employer shall be liable to the employee for
3 18 ~~any the unpaid wages or expenses that are so intentionally~~
3 19 ~~failed to be paid or reimbursed~~, plus liquidated damages,
3 20 court costs, and any ~~attorney's attorney~~ fees incurred in
3 21 recovering the unpaid wages and determined to have been usual
3 22 and necessary. ~~In other instances the employer shall be~~
3 23 ~~liable only for unpaid wages or expenses, court costs and~~
3 24 ~~usual and necessary attorney's fees incurred in recovering the~~
3 25 ~~unpaid wages or expenses.~~

3 26 Sec. 8. Section 91A.10, subsection 5, Code 2009, is
3 27 amended to read as follows:

3 28 ~~5. An employer shall not discharge or in any other manner~~
3 29 ~~discriminate against any employee because the employee has~~
3 30 ~~filed a complaint, assigned a claim, or brought an action~~
3 31 ~~under this section or has cooperated in bringing any action~~
3 32 ~~against an employer.~~

3 33 5. a. An employer or other person shall not discharge or
3 34 in any other manner discriminate or retaliate against any of
3 35 the following:

4 1 (1) An employee or other person for exercising any right
4 2 provided under this chapter or any rules adopted pursuant to
4 3 this chapter.

4 4 (2) Another employee or person for providing assistance to
4 5 an employee or providing information regarding the employee or
4 6 person.

4 7 (3) Another employee or person for testifying or planning
4 8 to testify in any investigation or proceeding regarding the
4 9 employee or person.

4 10 b. Taking adverse action against an employee or other
4 11 person within ninety days of an employee's or other person's
4 12 engaging in any of the activities in paragraph "a" raises a
4 13 presumption that such action was retaliation, which may be
4 14 rebutted by clear and convincing evidence that such action was
4 15 taken for other permissible reasons.

4 16 c. Any employee may file a complaint with the commissioner
4 17 alleging discharge, ~~or~~ discrimination, ~~or~~ retaliation within
4 18 thirty days after such violation occurs. Upon receipt of the
4 19 complaint, the commissioner shall cause an investigation to be
4 20 made to the extent deemed appropriate. If the commissioner
4 21 determines from the investigation that the provisions of this
4 22 subsection have been violated, the commissioner shall bring an
4 23 action in the appropriate district court against such person.
4 24 The district court shall have jurisdiction, for cause shown,
4 25 to restrain violations of this subsection and order all

4 26 appropriate relief including rehiring or reinstatement of the
4 27 employee to the former position with back pay.
4 28 Sec. 9. Section 91A.10, Code 2009, is amended by adding
4 29 the following new subsection:
4 30 NEW SUBSECTION. 6. A civil action to enforce subsection 5
4 31 may also be maintained in any court of competent jurisdiction
4 32 by the commissioner or by any party injured by a violation in
4 33 subsection 5. An employer or other person who retaliates
4 34 against an employee or other person in violation of subsection
4 35 5 shall be required to pay the employee or other person an
5 1 amount set by the commissioner or a court sufficient to
5 2 compensate the employee or other person and to deter future
5 3 violations, but not less than one hundred fifty dollars for
5 4 each day that the violation occurred.

5 5 Sec. 10. NEW SECTION. 91A.15 PERSONAL LIABILITY
5 6 JUDGMENTS.

5 7 1. An officer of a corporation, an officer of an
5 8 association, a member of a limited liability company, a
5 9 manager of a limited liability company, or a partner of a
5 10 partnership is personally liable for a judgment obtained
5 11 against an employer for failure to pay wages due pursuant to
5 12 this chapter or chapter 91D, notwithstanding sections
5 13 490A.601, 490A.602, 497.33, 498.21, 498.35, 499.59, or any
5 14 other provision of law. The dissolution of a corporation,
5 15 association, limited liability company, or partnership shall
5 16 not discharge a person's liability for payment of a judgment
5 17 under this section.

5 18 2. No person shall be held personally liable for payment
5 19 of a judgment under this section unless the person meets the
5 20 following criteria:

5 21 a. The person has control, supervision of, or authority
5 22 for remitting wage payments.

5 23 b. The person has a substantial legal or equitable
5 24 interest in ownership of the employer.

5 25 3. No person shall be held personally liable under this
5 26 section for payment of a judgment based on civil penalties.

5 27 4. No person shall be held personally liable under this
5 28 section for payment of the portion of a judgment based on
5 29 attorney fees or court cases.

5 30 Sec. 11. NEW SECTION. 91A.16 COMMISSIONS EARNED DATE.

5 31 An employer shall not require that a person be a current
5 32 employee to be paid a commission that the person otherwise
5 33 earned.

5 34 Sec. 12. EFFECTIVE DATE. This Act takes effect January 1,
5 35 2010.

6 1 EXPLANATION

6 2 This bill relates to employers and individuals who perform
6 3 labor and wage payment collection.

6 4 In Code section 91A.2(6), "liquidated damages" is defined
6 5 as not to exceed twice the amount of unpaid wages.

6 6 Code section 91A.5 is amended to add that the employer has
6 7 the burden to establish a deduction from employees' wages is
6 8 lawful.

6 9 Code section 91A.6(1) is amended to remove the requirement
6 10 that an employer be notified by the division of labor services
6 11 of the department of workforce development before the employer
6 12 is required to fulfill the requirements in subsection 1
6 13 relating to employee wage and benefit information. In Code
6 14 section 91A.6(1)(b), the employer must notify employees in
6 15 writing whose wages are determined based on a task, piece,
6 16 mile, or load basis about the method to calculate wages, when
6 17 wages are earned. Code section 91A.6(1)(e) is amended to
6 18 establish a rebuttable presumption that an employer did not
6 19 pay the minimum wage if the employer does not maintain proper
6 20 payroll records.

6 21 Code section 91A.6(4) is amended so that the employer must
6 22 send to each employee by mail, or at the place of business
6 23 during the employee's working hours a statement of the
6 24 employee's earnings, deductions made, and as applicable the
6 25 following: for an employee paid hourly, the number of hours
6 26 worked during the pay period; for an employee paid on a
6 27 percentage of sales or revenue generated, a list of sales or
6 28 amount of revenue during the pay period; and for an employee
6 29 paid based on the number of tasks, pieces, miles, or loads
6 30 performed, the applicable number performed during the pay
6 31 period. An employer who provides an electronic statement and
6 32 gives employees free and unrestricted access to the statement
6 33 is in compliance with the Code section.

6 34 In Code section 91A.8, when any specified violation of this
6 35 Code chapter occurs an employer shall be liable for unpaid
7 1 wages or expenses plus liquidated damages, court costs, and

7 2 attorney fees incurred in recovering wages.
7 3 Code section 91A.10(5), which is the subsection covering
7 4 retaliatory actions by employers or others, is expanded to
7 5 cover persons other than employees who act under this Code
7 6 chapter with respect to an employee. A 90-day period is
7 7 established during which any action against an employee or
7 8 other person is rebuttably presumed to be retaliatory. New
7 9 subsection 6 is created in Code section 91A.10 to allow the
7 10 commissioner or any injured party to maintain a civil action
7 11 in any court of proper jurisdiction. An employer who
7 12 retaliates against an employee or other person shall
7 13 compensate the injured party an amount set by the commissioner
7 14 or the court, but not less than \$150 for each day of the
7 15 violation.

7 16 In new Code section 91A.15, officers of companies,
7 17 associations, limited liability companies, and partners in
7 18 partnerships are held personally liable, notwithstanding any
7 19 other Code section, to employees for failing to pay wages.
7 20 Such an individual must have some control over wage payments
7 21 and a substantial legal or equitable interest in the ownership
7 22 of the employer.

7 23 In new Code section 91A.16, an employer shall not require
7 24 that an individual be a current employee to be paid an earned
7 25 commission.

7 26 The bill takes effect January 1, 2010.

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